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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,434	11/17/2004	Peter Baur	CS-8269/LeA 35,439	7607
34469 7590 07/09/2008 BAYER CROPSCIENCE LP Patent Department 2 T.W. ALEXANDER DRIVE RESEARCH TRIANGLE PARK, NC 27709			EXAMINER SULLIVAN, DANIELLE D	
			ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			07/09/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/501,434

**Applicant(s)**

BAUR ET AL.

**Examiner**

DANIELLE SULLIVAN

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 17-36 are pending.

#### ***Withdrawn rejections***

Applicant's amendments and arguments filed [insert date] are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below are herein withdrawn. The following rejection has been maintained.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kojima et al. (WO 96/31121) in view of Kaneko et al. (US 4,351,753) and in further view of Feucht et al. (US 6,395,684 and US 6,562,760).

#### **Applicant's Invention**

Applicant claims a method of improving the penetration of an herbicidally active triazolinone into a plant comprising applying to a plant formula (I) and one or more herbicidally active triazolinones. Applicant also claims the composition. Claims 18, 25 and 27 limit n to 6 mole ethoxylate. Claims 19, 24 and 27 limit Q to isotridecyl. Claims 20, 23, 27 and 31 limit the triazolinone to flucarbazone-sodium or propoxycarbazone-

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sodium with claim 32 further limiting it to propoxycarbazone-sodium. Claims 28, 33 and 34 limit the composition to include additives added to form compositions having distinct ranges of a) formula (I) (0.1-95%, 0.5-40% and 0.02-0.25% respectively), b) triazolinones (0.1-95%, 2.5-70% and 0.01-0.25% respectively) and c) additives (4.9-80%, 5-50% and 0-99% respectively). Claim 22 limits the ratio of triazolinone of formula (I) from 1:0.5 to 1:5.

### **Determination of the scope and the content of the prior art**

#### **(MPEP 2141.01)**

Kojima et al. teaches an herbicidal composition which contains at least one adjuvant selected from polyoxyethylene isotridecyl ether (Formula (1)) and a herbicide (Glyphosate + DCMU or Bialophos + DCMU) (abstract). Genapol X-060 (isotridecyl alcohol with 6 mole ethylene oxide) is disclosed as an example of an adjuvant used (page 2, paragraph 5).

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Kojima et al. does not teach the specific herbicides flucarbazone-sodium or propoxycarbazone-sodium in a combination with Formula (I) wherein  $n=6$  as an herbicidally active formulation, a plant treatment composition. Also, Kojima et al. does not teach the plant treatment composition comprising one or more additives. It is for this reason that Feucht et al. ('760 and '684) are joined. Kojima et al. does not teach a method of using flucarbazone-sodium or propoxycarbazone-sodium

in combination with polyoxyethylene isotridecyl ether it is for this reason that Kaneko is added.

Kaneko et al. teaches polyoxyalkylene block copolymers useful in flowable pesticide concentrates (column 1, lines 8-11). Also, alcohol ethoxylates, such as tridecyl alcohol, 6 mole ethoxylate (Formula (1) wherein  $n=6$ ), plus water is disclosed as a good solvent (column 1, lines 54-57).

Feucht et al. ('760) teaches the selective-herbicidal composition flucarbazone-sodium and methods for selective control of weeds by applying the compositions together with surfactants and/or customary extenders (abstract; column 5, lines 1-14).

Feucht et al. ('684) teaches the selective-herbicidal composition propoxycarbazone-sodium and methods for selective control of weeds by applying the compositions together with surfactants and/or customary extenders (abstract; column 5, lines 5-17).

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kojima et al., Kaneko et al. and Feucht et al. ('760 and '684) to formulate an herbicidal composition comprising a Formula (I) (where  $n=6$  and Q is isotridecyl) and triazolinones of formula (II) such as, flucarbazone-sodium or propoxycarbazone-sodium. One would have been motivated to specifically use

Formula (I) where  $n=6$  because Kaneko et al. teaches that it is an excellent solvent for agricultural products. Further, one would have been motivated to include flucarbazone-sodium or propoxycarbazone-sodium because Feucht et al. ('760 and '684) teach that they are herbicides that can be formulated with other additives and adjuvants. Therefore, one would have been motivated to substitute flucarbazone-sodium or propoxycarbazone-sodium in place of the herbicide taught by Kojima et al. in order to achieve a new herbicidal formulation.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kojima et al., Kaneko et al. and Feucht et al. ('760 and '684) to further include Formula (I) (where  $n=6$  and Q is isotridecyl) in a range from (0.1 to about 95%), (0.5 to about 40%) and about (0.02 to about 0.25%) by weight of the composition and one or more herbicidally active triazolinones of Formula (II) in a range from (0.1 to about 95%), (2.5 to about 70%) and (0.01 to about 2%) by weight of the composition. One would have been motivated to include these ranges because it is routine optimization the adjust various components of an herbicidal formulation for application to various plants. One would have been motivated to manipulate ranges during routine experimentation to discover the optimum or workable range since the prior art provides the general range. Therefore, one would have been motivated to use the appropriate amount of herbicides and then and the necessary amounts of formula (I) within the composition.

***Response to Arguments***

Applicant's arguments filed 3/13/2008 have been fully considered but they are not persuasive. Applicants have asked that a English translation of Kojima et al. (WO 96/31121) be provided. The English translation of WO96/31121 is forthcoming. Applicants argue that the polyoxyethylene isotridecyl ether is not clearly disclosed as having a degree of ethoxylation of 4-8, where as the abstract fails to note any degree of ethoxylation and the abstract provides no limitation on the polyoxyethylene moiety. Applicants should note that the preferred polyoxyethylene isotridecyl ether is Genapol X-060, produced by Hoechst AG, which is written in plain English on page 2. Genapol X-060 is an isotridecyl alcohol ethoxylate with n=6 as specified by an reads on formula (I).

Applicant also argues that Kaneko provides no recognition of pairing the ethoxylate with the claimed herbicidal compounds since they are entirely different compounds and therefore examiner is using hindsight to formulate the present composition. However, absent any evidence of unexpected results the idea of combining them flows logically from their having been individually taught in prior art." In re Kerkhoven 206 USPQ 1069, 1073. Thus, combining an isotridecyl alcohol ethoxylate with n=6 with herbicides and option auxillary agents, as claimed in the instant invention, is prima facie obvious.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE SULLIVAN whose telephone number is (571)270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan  
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Primary Examiner, Art Unit 1611